



Billing Code: 5001-06

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2012-OS-0104]

32 CFR Part 319

Privacy Act; Implementation

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Defense Intelligence Agency (DIA) is adding a new exemption rule for LDIA 0209, entitled "Litigation Case Files" to exempt those records that have been previously claimed for the records in another Privacy Act system of records. DIA is updating the DIA Privacy Act Program by adding the (k)(2) and (k)(5) exemptions to accurately describe the basis for exempting the records in the system of records notice LDIA 0209, Litigation Case Files. In addition, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this case record, the Defense Intelligence Agency hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records, which they are a part.

This direct final rule makes non-substantive changes to the Defense Intelligence Agency Program rules. This will improve the efficiency and effectiveness of DoD's program by ensuring the integrity of the security and counterintelligence records by the Defense Intelligence Agency and the Department of Defense. This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule will be effective on **[INSERT DATE 70 DAYS AFTER THE DATE OF PUBLICATION IN FEDERAL REGISTER]** unless comments are received that would result in a contrary determination.

Comments will be accepted on or before **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN FEDERAL REGISTER]**. If adverse comment is received, DoD will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- * Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- * Mail: Federal Docket Management System Office, 4800 Mark Center Drive; East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The

general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231-1193.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the Federal Register. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 319

Privacy.

Accordingly, 32 CFR part 319 is amended as follows:

PART 319-DEFENSE INTELLIGENCE AGENCY PRIVACY PROGRAM

1. The authority citation for 32 CFR Part 319 continues to read as follows:

Authority: Pub. L. 93-579, 5 U.S.C. 552a(f) and (k).

2. Section 319.13 is amended by adding paragraph (1) to read as follows:

§319.13 Specific exemptions.

* * * * *

(1) *System identifier and name:* LDIA 0209, Litigation Case Files.

(1) *Exemptions:* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C 552a(j)(2), may be exempt pursuant to 5 U.S.C 552(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or which he would otherwise be eligible, as a result of maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This exemption provides limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information

may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a:

(c)(3), (d)(1)(2)(3)(4)(5), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I). Exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this case record, the Defense Intelligence Agency hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records, which they are a part.

(2) *Authority:* 5 U.S.C. 552a(j)(2), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(3) *Reasons:* The reason for asserting these exemptions (k)(2) and (k)(5) is to ensure the integrity of the litigation process.

Dated: September 11, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer

Department of Defense

[FR Doc. 2012-22745 Filed 09/14/2012 at 8:45 am; Publication
Date: 09/17/2012]